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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,843	10/02/2003	Nobuaki Uehara	AA604M	9529
27752	7590	06/14/2005	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			VANIK, DAVID L	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/677,843	<b>Applicant(s)</b> UEHARA ET AL.	
	<b>Examiner</b> David L. Vanik	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/13/04 &amp; 1/02/04</u> | 6) <input type="checkbox"/> Other: ____.  |

S.O.C.

## DETAILED ACTION

Receipt is acknowledged of the applicant's Information Disclosure Statements (IDS) filed on 1/2/2004 and 3/15/2004.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,316,545 ('545) in view of US Patent 5,415,857 ('857).

'545 teach a hair care composition comprising the following:

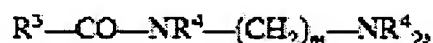
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1) a first high viscosity silicone compound, such as a silicone gum (column 2, lines 45-53 and column 4, lines 40-67),

2) a second low viscosity silicone compound (column 4, lines 40-67 and column 3, lines 38-46),

3) .05 to 10 parts by weight of a third silicone compound that can also be a high melting point fatty compound (column 2, line 66 – 23 and column 6, lines 26-52)

4) between 0.1 to 10 parts by weight of an amidoamine of the following structure:



in which  $R^3$  is a monovalent hydrocarbon group having 15 to 19 carbon atoms, each  $R^4$  is, independently from the others, a hydrogen atom or a monovalent hydrocarbon group having 1 to 5 carbon atoms and the subscript  $m$  is a positive integer of 2, 3 or 4;

5) an acid, such as lactic acid, wherein the ratio of the amidoamine to acid is in the range from 1:5 to 5:1,

6) and an aqueous carrier, such as water (column 3, lines 24-26).

'545 does not teach an aminosilicone compound.

'857 teach a hair conditioning shampoo comprising aminosilicone (abstract).

According to '857, the aminosilicone-based hair conditioning shampoo impart beneficial properties on hair. For example, hair is easier to comb and more manageable after

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using the '857 aminosilicone-based hair care composition (column 7, lines 15-37 and column 11, line 56 – column 12, line 5). It is also useful to employ aminosilicones in a conditioning shampoo formulation because they do not leave the hair greasy and do not “build up” on the hair (column 11, line 56 – column 12, line 5). Because aminosilicone compounds can impart beneficial properties on a hair care composition, such as influencing hair manageability, one of ordinary skill in the art would have been motivated to add an aminosilicone to the composition proposed by '545. Based on the teachings of '857, there is a reasonable expectation that aminosilicone compounds can effectively modulate the properties of a hair care composition by making hair more manageable and easier to comb. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate an aminosilicone in the invention advanced by '545 in view of advantageous properties as taught by '857.

Modifying and optimizing the viscosity and weight percentage of the above shampoo components to suitable levels without adversely affecting the skin or desired properties is deemed to be within the scope of the skilled artisan and obvious to one of ordinary skill in the art.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,316,545 ('545) in view of US Patent 5,415,857 ('857) and further in view of US Patent 5,393,519 ('519) and US 2003/0147825 ('825).

The teachings of '545 are enumerated above. While teaching amidoamines in general, '545 does not specifically teach behenamidopropyl dimethylamine.

'519 teach a shampoo composition comprising amidoamines (column 15, line 62 – column 16, line 24). According to '519, behenamidopropyl dimethylamine is a suitable amidoamine, one capable of being used in a shampoo (column 16, lines 9-24). Because, as confirmed by '519, behenamidopropyl dimethylamine is an effective amidoamine, one of ordinary skill in the art would have been motivated to add behenamidopropyl dimethylamine to the composition proposed by '545. Based on the teachings of '519, there is a reasonable expectation that the addition of behenamidopropyl dimethylamine to the composition of '545 would result in an effective amidoamine-based hair care composition. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add behenamidopropyl dimethylamine to the composition proposed by '545 in view of the teachings of '519.

'545 does not specifically teach polysorbate in a hair care composition.

'825 teach a personal care composition comprising rheology modifiers, such as polysorbate (abstract and paragraph 0116). It is beneficial to include rheology modifiers, such as polysorbate, in personal care compositions because they can improve emulsion and adjust the viscosity properties of a personal care composition, such as a shampoo (See JP 01224041, English translated abstract). Because rheology modifiers, such as polysorbate, can impart beneficial properties on a hair care

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composition, such as improving emulsion and viscosity properties, one of ordinary skill in the art would have been motivated to add a polysorbate to the composition proposed by '545. Based on the teachings of '825, there is a reasonable expectation that polysorbate can effectively modulate the properties of a hair care composition by improving the emulsion and altering the viscosity properties of the product. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate polysorbate in the invention advanced by '545 in view of advantageous properties as taught by '825.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,048,519 ('8519) in view of US patent 6,316,545 ('545).

'8519 teach a hair treatment composition comprising the following:

1) 0.01 to 50% of a first high viscosity silicone compound, such as a silicone gum (column 1, line 65 – column 2, line 19; also see US Patent 5,738,841, column 4, lines 31-34, teaching a viscosity around 500,000 mPa\*s),

2) 30 to 95% of a second low viscosity silicone compound, such as "DC200" (column 2, lines 19-52; also see US Patent 5,738,841, column 4, lines 31-34, teaching a viscosity of DC200 around 350 mPa\*s) ,

3) 0.1 to 10% of a third silicone amino functionalized compound (column 2, lines 53-65),

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4) around 1.2% of a high melting point fatty compound, such as cetostearyl alcohol (column 9, line 56),

5) an acid, such as lactic acid (column 5, line 63),

6) and an aqueous carrier, such as water (column 9, line 39).

'545 does not teach an amidoamine compound.

The teachings of '545 are enumerated above. '545 teach a hair care product comprising an amidoamine, such as dimethylaminopropyl stearamide (abstract). According to '545, dimethylaminopropyl stearamide is an effective emulsifying agent (abstract and column 8, lines 14-41). Because amidoamines, such as dimethylaminopropyl stearamide, can impart beneficial properties on a hair care composition, such as improving emulsion properties, one of ordinary skill in the art would have been motivated to add an amidoamine to the composition proposed by '8519. Based on the teachings of '545, there is a reasonable expectation that an amidoamine can effectively modulate the properties of a hair care composition by improving the emulsion properties of the product. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate an amidoamine in the invention advanced by '8519 in view of advantageous properties as taught by '545.



Modifying and optimizing the viscosity and weight percentage of the above shampoo components to suitable levels without adversely affecting the skin or desired properties is deemed to be within the scope of the skilled artisan and obvious to one of ordinary skill in the art.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,048,519 ('8519) in view of US patent 6,316,545 ('545) and further in view of US Patent 5,393,519 ('519) and US 2003/0147825 ('825).

The teachings of '8519 are enumerated above. '8519 does not specifically teach behenamidopropyl dimethylamine.

'519 teach a shampoo composition comprising amidoamines (column 15, line 62 – column 16, line 24). According to '519, behenamidopropyl dimethylamine is a suitable amidoamine, one capable of being used in a shampoo (column 16, lines 9-24). Because, as confirmed by '519, behenamidopropyl dimethylamine is an effective amidoamine, one of ordinary skill in the art would have been motivated to add behenamidopropyl dimethylamine to the composition proposed by '8519. Based on the teachings of '519, there is a reasonable expectation that the addition of behenamidopropyl dimethylamine to the composition of '8519 would result in an effective amidoamine-based hair care composition. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add

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behenamidopropyl dimethylamine to the composition proposed by '8519 in view of the teachings of '519.

'8519 does not specifically teach polysorbate in a hair care composition.

'825 teach a personal care composition comprising rheology modifiers, such as polysorbate (abstract and paragraph 0116). It is beneficial to include rheology modifier, such as polysorbate, in personal care compositions because they can improve emulsion and adjust the viscosity properties of a personal care composition, such as a shampoo (See JP 01224041, English translated abstract). Because rheology modifiers, such as polysorbate, can impart beneficial properties on a hair care composition, such as improving emulsion and viscosity properties, one of ordinary skill in the art would have been motivated to add a polysorbate to the composition proposed by '8519. Based on the teachings of '825, there is a reasonable expectation that polysorbate can effectively modulate the properties of a hair care composition by improving the emulsion and altering the viscosity properties of the product. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate polysorbate in the invention advanced by '8519 in view of advantageous properties as taught by '825.

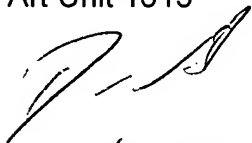
***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at (571) 272-0588. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik, Ph.D.  
Art Unit 1615



5/27/08



CARLOS A. AZPURU  
PRIMARY EXAMINER  
GROUP 1500